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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

8 KEITH WILSON, No. C-02-3278 EMC
9 Petitioner,
10 v. **ORDER RE RESPONDENT'S
TO DISMISS**
11 DERRAL ADAMS,
12 Respondent. **(Docket No. 42)**

ORDER RE RESPONDENT'S MOTION TO DISMISS

(Docket No. 42)

15 Respondent has moved to dismiss Claims Two and Three, as pled in Petitioner’s first
16 amended petition for writ of habeas corpus. Respondent argues that dismissal is warranted because
17 the claims are untimely. Alternatively, Respondent argues in favor of dismissal on the ground that
18 the claims have not been exhausted. In his response, Petitioner agrees that Claims Two and Three
19 have not been exhausted. Petitioner asks that he be given permission to strike the unexhausted
20 claims and proceed with the only exhausted claim (*i.e.*, Claim One). *See Anthony v. Cambra*, 236
21 F.3d 568 (9th Cir. 2000) (noting that “district courts must provide habeas litigants with the
22 opportunity to amend their mixed petitions by striking unexhausted claims as an alternative to
23 suffering dismissal”); *James v. Borg*, 24 F.3d 20, 24 (9th Cir. 1994) (noting that, “[i]n general, a
24 habeas petition should be dismissed if a petitioner has failed to exhaust state remedies as to even one
25 claim”; but adding that “[a] petitioner may . . . choose to strike any unexhausted claims and proceed
26 on the exhausted ones”).

27 The Court grants Petitioner's request. Accordingly, Claims Two and Three are hereby
28 stricken from the first amended petition, and this case shall proceed with respect to Claim One only.

1 With respect to Claim One, Respondent is ordered to file and serve an answer in accordance
2 with Section 2254 Rule 5 and Habeas Corpus Local Rule 2254-6 no later than February 11, 2013.

3 Petitioner may serve and file a traverse responding to matters raised in the answer in
4 accordance with Section 2254 Rule 5 and Habeas Corpus Local Rule 2254-6 no later than March 11,
5 2013.

6 The hearing on Respondent's motion is **VACATED**.

7 This order disposes of Docket No. 42.

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9 IT IS SO ORDERED.

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11 Dated: December 11, 2012

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14 EDWARD M. CHEN
15 United States District Judge